# CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	Force	☑ Discourt.	U.S.
Ben Gilmore		Squad #9	201506328	☑ Abuse	O.L.	☐ Injury
Incident Date(s)		Location of Incident:		Precinct:	18 Mo. SOL	EO SOL
Friday, 08/22/2014 10:45 PM		Utica Avenue and Empire Boulevard		71	2/22/2016	2/22/2016
Date/Time CV Reported	CV Reported At:		How CV Reported:	Date/Time Received at CCRB		RВ
Fri, 07/31/2015 9:12 AM		CCRB Phone		Fri, 07/31/	Fri, 07/31/2015 9:12 AM	
Complainant/Victim	Type Home Address					
Witness(es) Home Address						
Subject Officer(s)	Shield	TaxID	Command			
1. POM Raymond Higgins	28788	941338	PBBS SU			
2. POM Hugh Herbert	01343	930337	001 PCT			
Witness Officer(s)	Shield N	o Tax No	Cmd Name			
1. POM Travis Alexander	20494	942936	067 PCT			
Officer(s)	Allegatio	on		Inve	stigator Recon	mendation
A.POM Raymond Higgins	Abuse: PO Raymond Higgins frisked § 87(2)(b)					
B.POM Hugh Herbert	Abuse: PO Hugh Herbert searched the car in which was an occupant.					
	Discourtesy: PO Hugh Herbert spoke discourteously to \$87(2)(b)					

<u>Case Summary</u>
On July 31, 2015, § 87(2)(b) filed this complaint with the CCRB via telephone
(Board Review 13). On August 22, 2014, at approximately 10:45 p.m. §87(2)(b) was
operating a vehicle which \$87(2)(b) reported held one passenger in the front seat, \$87(2)(b)
At the intersection of Utica Avenue and Empire Boulevard in Brooklyn, §87(2)(b)
vehicle was stopped by an unmarked police vehicle. Three plainclothes officers were inside of the
unmarked police vehicle: PO Raymond Higgins, PO Hugh Herbert, and PO Travis Alexander.
alleged that after complying with an instruction to step out of his vehicle, PO
Higgins immediately frisked his entire body (Allegation A). [887(2)(b)] alleged that he was led to
the rear of his vehicle and PO Herbert searched his vehicle, including the glove compartment and
center console (Allegation B). was eventually placed in handcuffs. 887(2)(b) alleged
that when he asked why he was being arrested, PO Herbert told him to, "Shut the fuck up, we're
going to tell you," (Allegation C).
was arrested as a result of the incident (Board Review 01). He was charged
with § 87(2)(b)
There is no video footage of this incident.
This case was originally assigned to Ethan DeAngelo, and it was reassigned to Investigator
Ben Gilmore on September 14, 2015.
This complaint was filed over 11 months after the incident date (Board Review 13). §87(2)(6)

This complaint was filed over 11 months after the incident date (Board Review 13). said that he did not know about the Civilian Complaint Review Board until around the time he filed this complaint.

#### **Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation because \$87(2)(b) was arrested and has an ongoing criminal case regarding this incident (Board Review 01).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

   [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- A Notice of Claim inquiry was submitted with the New York City Comptroller's Office on October 13, 2015, and the results are pending. The results of the inquiry will be added to the case file upon receipt.

### **Civilian and Officer CCRB Histories**

- §87(2)(b) has filed one other CCRB complaint, §87(2)(b)
- PO Raymond Higgins has been a member of service for nine years. Six CCRB
  allegations have been made against PO Higgins in four separate cases, but there are no
  substantiated CCRB allegations against him. One previous frisk allegation was pleaded

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- against PO Higgins, dating back to 2008, and that case was closed as 'Complaint Withdrawn' (Board Review 05).
- PO Hugh Herbert has been a member of service for 13 years. 10 CCRB allegations have been made against him in seven separate cases, but there are no substantiated CCRB allegations against him. One previous discourtesy allegation was pleaded against PO Herbert dating back to 2007, and it was closed as 'Unsubstantiated' (Board Review 06).
  - o CCRB case #201504141 remains open, and to date, PO Herbert is the subject of five allegations in this case, one of which is a vehicle search.

#### **Potential Issues**

• The only known civilian witness in this case, \$87(2)(5) was unable to be located by the investigation. CCRB Complaint Tracking System, LexisNexis, BADS, Yellow Pages, and Department of Corrections searches for \$87(2)(5) yielded negative results (Board Review 07).

#### **Findings and Recommendations**

## **Explanation of Subject Officer Identification**

- PO Raymond Higgins acknowledged frisking \$87(2)(b) (Board Review 15).
- alleged that a white male officer who approached him from one of the front seats of an unmarked police vehicle, different from the officer who frisked him, searched his car and spoke discourteously to him (Board Review 14). It is undisputed that three officers were on the scene, identified by the investigation as PO Higgins, PO Herbert, and PO Alexander (Board Review 08). Aside from PO Higgins who acknowledged frisking PO Herbert was the only white male officer on the scene (PO Alexander is black). Moreover, both PO Higgins and PO Alexander reported that PO Herbert was seated in one of the front seats and that PO Alexander was in the back seat. [87(2)(9)

#### Allegations not pleaded

- \$87(2)(9) the driver of the vehicle, \$87(2)(b) was charged with two VTL infractions (Board Review 01).
- Abuse of Authority: A frisk allegation was not pleaded against PO Higgins for his frisk of the passenger of the vehicle, \$87(2)(b) Even though PO Higgins acknowledged frisking the passenger, \$87(2)(b) did not allege this and the investigation was unable to locate \$87(2)(b)

#### Allegation A – Abuse of Authority: PO Raymond Higgins frisked § 87(2)(b)

On August 22, 2014, at approximately 10:45 p.m. Solution is vehicle was pulled over at the intersection of Empire Boulevard and Utica Avenue in Brooklyn by an unmarked police vehicle which contained PO Higgins, PO Herbert, and PO Alexander. PO Higgins' memo book (Board Review 09), the arrest report (Board Review 01), criminal court complaint report/complaint screening room sheet (Board Review 10), and CCRB testimony (Board Review 15) were all consistent regarding why the vehicle was stopped: broken brake lights and solution, suspect, was not wearing a seatbelt. PO Alexander reported that there was no particular condition, suspect,

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or radio run the officers were responding to at the time of the car stop, and that he did not remember specifically why the vehicle was stopped. PO Herbert said that he did not recall what specifically he was doing around the time immediately before the car stop, nor did he know why the car was stopped.

Upon being pulled over, \$87(2)(6) testified that an officer asked him to step out of his vehicle and that he complied. PO Higgins corroborated this, saying that PO Herbert requested to step out of his vehicle after he told PO Herbert that he suspected to be in possession of forged credit cards, and that \$87(2)(6) complied. PO Higgins testified that \$87(2)(6) was not under arrest at this time. PO Alexander and PO Higgins each said they did not recall the details of the arrest.

alleged that as soon as he stepped out of his vehicle PO Higgins frisked his entire body, including his chest, torso, waistband area, and both legs (Board Review 14). PO Higgins corroborated this, saying that when \$87(2)(b) exited his vehicle, he "checked \$87(2)(b) exited his vehicle his vehicle, he "checked \$87(2)(b) exited his vehicle, he "checked \$87(2)(b) exit

PO Higgins, who was the arresting officer, said that \$37(2)(b) was later deemed to be under arrest when the credit cards that PO Higgins had suspected of being forged were tested and found to be forged. PO Higgins said that prior to conducting the frisk PO Higgins did not see anything on \$37(2)(b) to indicate that \$37(2)(b) possessed a weapon. A request for a Stop, Question and Frisk Report yielded negative results.

<u>People v. DeBour,</u> 40 N.Y.2d 210 (1976) states that in order to frisk an individual, an officer must harbor reasonable suspicion that the individual is in possession of a weapon (Board Review 12).

§ 87(2)(g)		
§ 87(2)(g)		

# Allegation B – Abuse of Authority: PO Hugh Herbert searched the car in which was an occupant.

alleged that after being placed in handcuffs and led to the rear of his vehicle at the scene of his arrest, PO Herbert searched his vehicle, including the glove compartment, center console, and beneath each seat (Board Review 14). During his CCRB interview, said that he did not "really see" the search of his vehicle.

PO Herbert testified that he did not recall the incident which happened 14 months prior to his CCRB interview, and he said that he did not recall if he searched the vehicle (Board Review

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suspected forged credit cards which searching the vehicle any further a Higgins acknowledged that \$87(2)(6)	at the scene (Board Rev	view 15). Both PO Alexan	
§ 87(2)(g)			
alleged that after being arrested, and PO Herbert restricted to the Review 14). S87(2)(b) and did not mal CCRB on July 31, 2015 (Board Review PO Herbert did not recall during the incident (Board Review "shut the fuck up," (Board Review fuck up," or using any profanity d	sponded, "Shut the fucke this allegation when eview 13), but rather in the incident, nor specify 16). PO Higgins did to 15). PO Alexander did to 15.	k up, we're going to tell you he initially filed the comparish his in-person interview. Fically did he recall if he unnot recall if PO Herbert told not recall PO Herbert said	ou," (Board blaint with the sed profanity dd \$87(2)(5) to
Squad:			
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0	-		
Attorney: Title/Signature	Print	Date	_
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16). PO Alexander said that as far as he could remember, neither PO Herbert nor PO Higgins searched the car in any capacity (Board Review 17). PO Higgins acknowledged retrieving the

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